



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 22 2004

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Agreement No. BF97285604-0

Mary Ann Holzkamp  
Glen Cove Community Development Agency  
City Hall  
9 Glen Street  
Glen Cove, New York 11542

Subject: Brownfields Cleanup Program

Dear Ms. Holzkamp:

Enclosed please find a Cooperative Agreement that provides assistance to the Glen Cove Community Development Agency for the above-referenced program. Your application for \$200,000 dated July 9, 2004 is approved. Your attention is directed to the Terms and Conditions of this agreement.

In addition, enclosed please find a checklist and the following blank forms that you will need in administering your agreement: (1) Request For Advance or Reimbursement (SF-270); (2) Financial Status Report (SF-269A); and, (3) MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements (EPA Form 5700-52A).

The enclosed award is forwarded to you in triplicate. Please sign and date all copies, retain one for your files and return two to this office, Attn: Roch Baamonde, Chief, Grants and Contracts Management Branch. Completed documents must be returned within three calendar weeks of receipt, or within any extension of time as may be granted by the U. S. Environmental Protection Agency.

Sincerely,

Joann Brennan-McKee  
Acting Assistant Regional Administrator  
for Policy and Management

Enclosures

cc: C. Longworth, Glen Cove  
D. Oglesby, Glen Cove

Internet Address (URL) • <http://www.epa.gov>

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>		ASSISTANCE ID NO.			DATE OF AWARD <b>SEP 15 2004</b>
			PRG	DOC ID	AMEND#	
			BF - 97285604 - 0			MAILING DATE <b>SEP 22 2004</b>
			TYPE OF ACTION New			
RECIPIENT TYPE: Municipal			PAYMENT METHOD: Reimbursement			ACH#
RECIPIENT: Glen Cove Community Development Agency City Hall, 9 Glen Street Glen Cove, NY 11542 EIN: 11-6003331			Send Payment Request to: Grants and Contracts Mgt Branch			
PROJECT MANAGER Danielle Oglesby City Hall, 9 Glen Street Glen Cove, NY 11542 E-Mail: dtoglesby@glencovecda.org Phone: 516-676-1625 x107			EPA PROJECT OFFICER Larry DAndrea 290 Broadway, ERRD/PSB/TST New York, NY 10007-1866 E-Mail: Dandrea.Larry@epamail.epa.gov Phone: 212-637-4314			EPA GRANT SPECIALIST Jennifer Chernowski Grants and Contracts Mgt Branch, OPM/GCMB E-Mail: Chernowski.Jennifer@epamail.epa.gov Phone: 212-637-3421
<b>PROJECT TITLE AND DESCRIPTION</b> Glen Cove - Brownfields Cleanup Under this cooperative agreement, the Town Glen Cove, NY, will carry out hazardous cleanup activities at the Gladsky site on Garvies Point Road. Activities will include the following: 1) Develop a Community Response Plan; 2) Establish an Administrative Record; 3) Prepare an Analysis of Brownfields Cleanup Alternatives; 4) Write an Action Memo; 5) Conduct Environmental Cleanup						
BUDGET PERIOD 10/01/2004 - 09/30/2006		PROJECT PERIOD 10/01/2004 - 09/30/2006		TOTAL BUDGET PERIOD COST \$240,000.00		TOTAL PROJECT PERIOD COST \$240,000.00
<b>NOTE:</b> The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.						
<b>OFFER AND ACCEPTANCE</b>						
The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the <u>Glen Cove Community Development Agency</u> for <u>83.33</u> % of all approved costs incurred up to and not exceeding <u>\$200,000</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>07/09/2004</u> included herein by reference.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)				AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS Grants and Contracts Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866				ORGANIZATION / ADDRESS U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>						
SIGNATURE OF AWARD OFFICIAL 		TYPED NAME AND TITLE Joann Brennan-McKee, Acting Assistant Regional Administrator for Policy and Management			DATE <b>SEP 15 2004</b>	
This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.						
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>						
SIGNATURE		TYPED NAME AND TITLE Mary Ann Holzkamp, Chairman			DATE	

## EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 200,000	\$ 200,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 40,000	\$ 40,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 240,000	\$ 240,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal									
Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
GLDSKY MAR	HE0567	04	E4	02D2	402D79E	41.14	G231OQ00	-	200,000
									200,000

Budget Summary Page: Glen Cove Brownfields Cleanup Grant - Gladsky Marina Site

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$28,000
2. Fringe Benefits	\$9,800
3. Travel	\$800
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$201,400
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$240,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$240,000
12. Total Approved Assistance Amount	\$200,000
13. Program Income	\$0

## **Administrative Conditions**

### **1. FINANCIAL STATUS REPORTS/GRANT CLOSEOUT**

#### **A) Interim Financial Status Reports (FSR)**

An Interim Financial Status Report (FSR) is to be submitted to the EPA Grants and Contracts Management Branch 90 days after the anniversary of the project period start date. FSRs must be prepared in whole dollar amounts.

#### **B) Final Financial Status Reports**

In accordance with 40 CFR 30.52(a)(1)(iv) or 31.41(b)(4) as it applies, the recipient shall submit to the EPA, Region 2, Grants and Contracts Management Branch a "final" Financial Status Report (FSR) within 90 days after the expiration of the project period end date or the date of termination. FSRs must be prepared in whole dollar amounts.

EPA may extend the due date for submission of a final FSR upon a written request from the recipient. The recipient is required to submit an "interim" FSR to the EPA Region 2 Grants and Contracts Management Branch, along with this request.

#### **C) Closeout**

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FSR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Contracts Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Final Request for Payment (Standard Form 270)
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

### **2. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

In accordance with EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance programs, the recipient agrees to:

a) the applicable FY 2004 "fair share" goals negotiated with EPA by the State as follows:

- for the New York Upstate Region MBE: Construction is 6%; Equipment, Supplies and Services are 8.8%.
- for the New York Upstate Region WBE: Construction is 6%; Equipment, Supplies and Services are 8.8%.
- for the New York City Region MBE: Construction is 21.5%; Equipment, Supplies and Services are 18.8%.
- for the New York City Region WBE: Construction is 13.7%; Equipment,

Supplies and Services are 20.5%.

If the recipient does not want to rely on the applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in the relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted to Otto Salamon, the Region 2 MBE/WBE Small Disadvantaged Business Utilization Officer (SDBUO), within 30 days of award and approved by EPA no later than 30 days thereafter.

b) ensure to the fullest extent possible that at least the FY 2004 "fair share" percentage negotiated with EPA of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.

c) apply the applicable State's FY 2004 "fair share" goals or its own negotiated FY 2004 "fair share" goals to any procurement initiated after the FY 2004 "fair share" objectives become effective. The recipient also agrees to include in its bid documents the applicable FY 2004 "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the applicable FY 2004 "fair share" percentages and to comply with paragraphs (d) through (e).

d) follow the six affirmative steps stated in 40 CFR 30.44(b), 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate.

e) submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" to the Region 2 EPA SDBUO thirty days after the end of the Federal fiscal year (October 30) or within ninety days after the grant's expiration date, whichever date is earlier. This applies to all assistance agreements except project grants awarded under 40 CFR Part 31. Reports for these agreements are due 30 days after the end of each Federal fiscal quarter.

f) notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the fair share objective, in the event race and/or gender neutral efforts prove to be inadequate to achieve a fair share objective for MBE/WBE.

### **3. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE (PART 31)**

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA, Region 2, Grants and Contracts Management Branch prior to the budget/project period expiration dates. An interim FSR must be submitted along with the request which covers all expenditures and obligations to date in whole dollar amounts.

### **4. REIMBURSEMENT**

The recipient shall request Federal payments by completing Standard Form 270, "Request for Advance or Reimbursement" and submitting it to the EPA Grants and Contracts Management Branch. Requests for reimbursement should be submitted on a quarterly basis. However, if the

recipient incurs more than \$500 in costs in a given month a request for reimbursement may be submitted to the EPA Grants and Contracts Management Branch on a monthly basis. The requests will report cumulative expenditures both (Federal and Non-Federal) incurred under the grant. Such expenditures should be reported in whole dollar amounts. EPA will make payments for allowable expenditures at the ratio shown in the latest Agreement. The recipient is already enrolled in the Electronic Fund Transfer (EFT) payment program and, therefore, payments will be made using the existing Vendor Code.

## **5. SINGLE AUDITS**

A recipient who expends more than \$500,000 annually in Federal funds is required to have an independent audit performed in accordance with the Office of Management and Budget (OMB) Circular A-133. The cost of such an audit is an allowable charge to your Federal grant awards on a prorated basis. If you have already met this requirement, please submit 2 copies of the latest independent audit report to the EPA, Grants and Contracts Management Branch within 30 days of the date of this award. If the required audit has not been performed, submit milestone dates for compliance with OMB Circular A-133 within 30 days of the date of this award to the EPA, Grants and Contracts Management Branch.

## **6. SUSPENSION AND DEBARMENT**

Recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at <http://epls.arnet.gov>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

## **7. UTILIZATION OF SMALL BUSINESS IN RURAL AREAS (SBRAs)**

In accordance with Section 129 of Public Law 100-590 (i.e., Small Business Act amendments) the recipient agrees and is required to utilize the following affirmative steps if a contract is awarded under this assistance agreement:

- a. placing SBRAs on solicitation lists;
- b. making sure that SBRAs are solicited whenever they are potential sources;
- c. dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;



- d. establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
- e. using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
- f. requiring the contractor to take the affirmative steps in subparagraphs a. through e. of this part if subcontracts are awarded.

## 8. RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

## 9. LOBBYING AND LITIGATION CERTIFICATE

Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, *Lobbying and Litigation Certificate*, within 90 days after the end of project period.

The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States.

## 10. RECYCLING AND WASTE PREVENTION

In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

### STATE AGENCIES AND POLITICAL SUBDIVISIONS:

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any



acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

## **Programmatic Conditions**

### **I. GENERAL FEDERAL REQUIREMENTS**

**General Condition:** These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients.

#### **1. Federal Requirements and Guidance**

- a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding complies with all applicable Federal and State laws and regulations. Cooperative agreement funding includes both the federal and recipient shares. The CAR must ensure cleanups are protective of human health and the environment.
- b. In addition to CERCLA 104(k), other applicable Federal laws and requirements include:
  - (1). CERCLA 104(g) requires that grant recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for laborers and mechanics engaged in construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. The CAR agrees to ensure that the wage provisions of the Davis-Bacon Act are complied with for laborers and mechanics employed by contractors and subcontractors in the performance of construction, repair or alteration work funded in whole or in part by this cooperative agreement.
  - (2). The CAR agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."
  - (3). The CAR agrees to comply or ensure compliance with all other Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## **2. Participation in State and Tribal Response Program**

The CAR must consider whether they are required to or will otherwise voluntarily conduct the cleanups funded by this cooperative agreement under a State or Tribal response program. If the CAR does not participate in a State or Tribal response program, then the CAR is required to consult with and take direction from the Environmental Protection Agency (EPA) with respect to all phases of cleanup activity to ensure that the proposed cleanup is protective of human health and environment.

## **3. Site Approval, Ownership, Changes to Sites Boundaries and Cleanup Methods**

- a. The CAR'S application dated July 14, 2004 provided information on the following site owned by the CAR for cleanup: 1) Gladsky Marina site, Glen Cove, NY.
- b. EPA has approved the above-referenced site(s) for cleanup with funds awarded through this cooperative agreement and the CAR may not change this site or work on alternate sites with the funds provided under this cooperative agreement.
- c. CERCLA 104(k) authorizes funding for cleanup response only on sites that are owned by the CAR. In accepting this cooperative agreement, the CAR represents that as of the date of award of this grant, the CAR is the owner in fee simple (unless EPA has approved in writing of a different form of ownership) of the site(s) identified in subparagraph "a" of this paragraph, and that the CAR will continue to own the site(s) throughout the period of performance of this grant.
- d. Any changes to the boundaries of the site(s) must be approved by EPA, in writing, in a revised workplan.
- e. The CAR may not make substantial changes to the cleanup method described in the workplan without prior EPA approval.
- f. The CAR agrees to notify EPA in writing, within five days after the occurrence, if any of the sites which are covered by this cooperative agreement become the subject of any notice of violation of any environmental law, regulation or standard of the Federal, State or any Local governmental entity and the CAR further agrees to promptly come into compliance with any such governmental requirement.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

### **4. Term of the Agreement**

- a. The term of this agreement is two years from the date of award, unless otherwise extended by EPA at the CAR's request.
- b. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement.

## 5. Substantial Involvement

- a. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - (1). Substantial involvement by EPA generally includes administrative activities such as: monitoring the CAR's implementation of this cooperative agreement; review of cleanup project phases; and approval of substantive terms included in contracts awarded with funds provided by this cooperative agreement.
  - (2). Substantial EPA involvement may include reviewing financial and program performance reports; and monitoring all reporting, record-keeping, and other program requirements. If the CAR awards a subgrant for cleanup, the CAR may also request technical assistance from EPA to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies to potential subgrant recipients. Generally, this prohibition prohibits a subgrant recipient from using grant funds to cleanup a site if the subgrant recipient is potentially liable under §107 of CERCLA for that site.
- b. Effect of EPA's substantial involvement includes:
  - (1). EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - (2). The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
  - (3). The CAR remains responsible for ensuring that costs are eligible under CERCLA 104(k)(3) and under applicable OMB Circulars.

## 6. Cooperative Agreement Recipient Roles and Responsibilities

- a. The CAR shall ensure that it will use a qualified environmental professional to coordinate, direct, and oversee all cleanup activities under this cooperative agreement and that it will acquire the services of such professional if they do not have such a professional on staff.
- b. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
- c. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition. The CAR agrees that it will not award a subgrant other than through competitive procedures unless the EPA Project Officer has consented thereto in advance in writing.
- d. Conflict of Interest: The CAR shall establish and enforce conflict of interest provisions that prevent the award of contracts or subgrants that create real or apparent personal conflicts of

interest or the appearance of the CAR's lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a contract or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- (1). The affected party;
- (2). Any member of his immediate family;
- (3). His or her partner; or
- (4). An organization which employs, or is about to employ, any of the above, has a financial or other interest in the contract awardee or in the subgrant recipient.

The policies established by the CAR shall require that affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from contract awardees or subgrant recipients. CAR policies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties. The CAR agrees that it will monitor and enforce its conflict of interest policies as applied to this cooperative agreement.

## **7. Quarterly Progress Reports**

- a. The CAR is required to submit progress reports on a quarterly basis, thirty (30) days after the end of each Federal fiscal quarter, to the EPA Project Officer. The quarterly progress reports must be prepared in accordance with the EPA Quarterly Progress Report Template and the EPA Property Profile Template, both of which will be provided to the CAR by the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - (1). Documentation of progress at meeting the performance objectives, project narrative and project time line.
  - (2). An update on project milestones.
  - (3). A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
  - (4). Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with funds under this cooperative agreement, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where cleanup activities were completed. To the extent consistent with the workplan for this cooperative agreement, activities undertaken with EPA funds to be included in quarterly performance reporting include:
    - Acres per property(ies)
    - Cleanup completed
    - Types of contaminants removed/addressed
    - Acres of greenspace created/preserved
    - Number of properties with one(1) or more engineering/institutional controls
    - Redevelopment underway
    - Funds leveraged
    - Jobs leveraged
    - Health monitoring studies, insurance, or institutional controls
- b. The CAR must complete Property Profile Forms provided by EPA.

### III. FINANCIAL ADMINISTRATION REQUIREMENTS

#### 8. Cost Share Requirement

CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

#### 9. Eligible Uses of the Funds for the Cooperative Agreement Recipient

- a. To the extent allowable under the workplan, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, eligible programmatic expenses may include:
  - (1). Ensuring cleanup activities at a particular site are authorized by CERCLA 104(k) and the EPA approved workplan;
  - (2). Ensuring that a cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - (3). Using a portion of the grant to purchase environmental insurance if the purchase of such insurance is necessary to carry out cleanup activities;
  - (4). Any other eligible programmatic costs including costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants; and carrying out outreach pertaining to the cleanup activities.

#### 10. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

- a. The CAR was awarded grant funding to address hazardous waste or mixed waste contaminants only. Grant funding **may not** be used to address petroleum-only.
- b. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - (1). Pre-cleanup environmental activities such as inventory, site assessment, identification, and characterization. However, the CAR may request EPA written approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup actions;
  - (2). Development activities that are not brownfields cleanup activities (e.g., construction of a new facility or marketing of a property);
  - (3). Job training unrelated to performing a specific cleanup at a site covered by the grant;
  - (4). To pay for a penalty or fine;
  - (5). To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - (6). To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;

- (7). To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
  - (8). Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
- c. CERCLA Section 104(k)(4)(B)(i)(III) prohibits the use of any portion of the funds provided by this cooperative agreement for the payment of an administrative cost.
- (1) Ineligible administrative costs include all indirect costs as described in applicable OMB Circulars.
  - (2). Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee is required to carry out the activity under the grant agreement.
  - (3). Ineligible grant administration costs include:
    - (i) Preparation of applications for Brownfields grants;
    - (ii) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
    - (iii) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
    - (iv) Preparing revisions and changes in the budgets, workplans, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
    - (v) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
    - (vi) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
    - (vii) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
    - (viii) Close out under 40 CFR 30.71 and 40 CFR 31.50.

## 11. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA §107

EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at a site for which the CAR was potentially liable under CERCLA 107. This determination may have been based on the CAR's status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), and in such event, the CAR must meet certain continuing obligations in order to maintain its status as a BFPP, CPO or ILO at the site. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA 104(k)(7)(C). These continuing obligations include:

- (1). complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls;
- (2). exercising appropriate care and taking reasonable steps with respect to hazardous substance releases by, for example, stopping any continuing releases and limiting exposures to such releases;
- (3). providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and
- (4). complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA may require additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r).

## **12. Interest-Bearing Accounts and Program Income**

- a. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.
- b. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

## **13. Other Brownfields Awards under CERCLA 104(d) or 104(k)**

The CAR is required to keep separate records for each assistance agreement awarded to it by EPA whether awarded prior hereto or whether awarded hereafter, and whether pursuant to Section 104(d) or 104(k) of CERCLA. The CAR may only charge costs to any such assistance agreement that are eligible under that agreement and that are included in the approved workplan and budget for that particular agreement. The CAR is further required to maintain documentation that clearly shows which activities were charged to each agreement and demonstrates that the same activities were not charged to more than one agreement. Please note that any personnel charging to this agreement who also work on any other activities must document their actual hours worked on each activity, and must account for 100% of their actual total time. Further, it should be noted that the statutory and regulatory requirements for this cooperative agreement are different from those for each of the other assistance agreements, and the CAR is responsible for following the applicable statutory and regulatory requirements for each type of agreement. Please note that the CAR is responsible for all required administrative activities and reporting, even of these activities are not eligible for funding under this cooperative agreement or any of the other assistance agreements.

# **IV. CLEANUP ENVIRONMENTAL REQUIREMENTS**

## **14. Authorized Cleanup Activities**

- a. The CAR shall prepare an Analysis of Brownfields Cleanup Alternatives (ABCA) which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The ABCA must address the effectiveness, implementability, and the cost of the response proposed. The ABCA will include an evaluation of reasonable alternatives including no action and address whether land use (institutional/engineering) controls will be necessary. The cleanup method chosen must be based on this ABCA.



- b. After the completion of the ABCA and the close of its comment period, the CAR shall prepare an Action Memo describing the proposed cleanup plan based on the ABCA and the entirety of the record. The Action Memo must: provide a description of the selected environmental cleanup plan; address why the cleanup is authorized by the regulatory agency; explain the rationale for selecting that particular action and why/how it meets cleanup goals; address the response to public comments on the ABCA; explain how the selected cleanup will conform to all applicable or relevant and appropriate requirements including federal and state laws or regulations. An authorized representative of the recipient must sign this action memo.

#### **15. Quality Assurance (QA) Requirements**

- a. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
- b. The CAR shall prepare a QA plan and submit such plan for EPA approval. The CAR may not perform work at any site under this cooperative agreement until EPA has approved the QA plan in writing.

#### **16. Community Relations and Public Involvement in Cleanup Activities**

All cleanup activities require a site-specific Community Relations Plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

#### **17. Administrative Record**

The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; site-specific Community Relations Plans, Analysis of Brownfields Cleanup Alternatives, Action Memo and the final cleanup report that verifies that the cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

#### **18. Implementation of Cleanup Activities**

- a. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented.
- b. If the CAR fails to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

## 19. Completion of Cleanup Activities

- a. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.
- b. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed in whole or in part with funds provided under this cooperative agreement. The CARs shall provide access to records relating to cleanups supported with cleanup grant funds to authorized representatives of the Federal government.